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No. 81-61

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED MINE WORKERS OF AMERICA
HEALTH AND RETIREMENT FUNDS, *et al.*,
Petitioners,

v.

GRACIE ROBINSON AND JUANITA HAGER, etc.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

Of Counsel:

MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

CHARLES P. O'CONNOR
MARGERY SINDER FRIEDMAN
JAMES H. LENGEL

Counsel for Amicus Curiae Bituminous Coal Operators' Association, Inc.

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BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

STATEMENT OF INTEREST

The Bituminous Coal Operators' Association, Inc. ("BCOA") is a multi-employer bargaining association representing approximately 160 member coal operators in collective bargaining matters with the United Mine Workers of America ("UMWA"). BCOA negotiated the National Bituminous Coal Wage Agreement of 1974

("NBCWA"), which established the UMWA 1950 Benefit Trust ("the 1950 Fund"), the trust fund that is in controversy in the case presently before the Court.

BCOA is concerned that the decision of the Court of Appeals below, which held that the negotiated eligibility rules for benefits under the trust fund transgress federal law, may have an adverse impact on collective bargaining in the coal industry, and may disrupt the efficient administration of the fund. The interest of BCOA is evidenced by the fact that the litigation concerns the health benefit eligibility rules negotiated by BCOA and the UMWA during bargaining in 1974. BCOA maintains that its position as the bargaining representative of the employers which make the vast majority of the fund's contributions will not otherwise be presented to the Court in this case. It has obtained the consent of all parties before the Court to file its brief as *amicus curiae*.

SUMMARY OF ARGUMENT

The Court of Appeals held that collectively bargained benefit eligibility rules of a trust fund, established pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947, are subject to judicial review for the purpose of ascertaining their reasonableness. Concluding that the UMWA and the BCOA established an arbitrary distinction between classes of beneficiaries during the course of collective bargaining in 1974, the Court struck down an eligibility requirement of the UMWA 1950 Benefit Trust. The trust fund's benefit levels and eligibility rules had been the subject of collective bargaining for the first time in 1974, as the result of a specific decision by the parties to reclaim control in these areas from the fund's trustees. In restructuring the parties' bargained-for benefit eligibility rules, the Circuit Court's holding is inimical and antithetical to the Congressional policy, recognized

and supportd by this Court, of fostering industrial peace through the encouragement of freedom of contract in the collective bargaining process.

When parties engage in good faith collective bargaining, with the object of reaching an agreement that will result in the orderly interaction of management and labor, a court may not substitute its preference for the inclusion of particular provisions in that agreement. While Section 8(d) of the National Labor Relations Act requires that the employer and the representative of its employees bargain collectively, it also provides that "such obligation does not compel either party to agree to a proposal or require the making of a concession." That the negotiated provisions at issue in this case were the terms of a Section 302(c)(5) trust fund does not alter the application of the Section 8(d) principle. The cases relied upon by the Court of Appeals in reaching its conclusion that the negotiated terms were subject to judicial review involved the power of the courts to review the exercise of discretion by fund trustees, and for that reason are clearly distinguishable from the instant case.

Even assuming *arguendo* that the bargaining parties' decisions regarding benefit eligibility are to be measured against the "arbitrary and capricious" standard typically applied to the decisions of fund trustees, the eligibility rules at issue in this case clearly meet that standard. The Respondents who brought this suit, seeking to be awarded certain benefits received by other groups of beneficiaries, were not employees within the bargaining unit for which benefits were sought during negotiations. At the very most, as they argued in the courts below, they were similarly situated to the widows of coal industry retirees. Their husbands had been eligible to retire at the time they died, but had not done so. This Court has held that retirees are not

employees for purposes of the mandatory obligation to bargain collectively under Section 8(d). Therefore, Robinson and Hager, as well as the class of purported beneficiaries they represented, were not entitled to consideration by the bargaining parties in 1974 because they derived whatever status they had from their husbands' entitlement.

Further, the Respondents had received certain benefits under the 1950 Fund that were greater than those given to other classes of beneficiaries. Respondents' class had either received all of the benefits to which they were entitled, or would continue to receive all to which they were entitled under the 1950 Fund; *i.e.*, no diminution of vested rights occurred. Accordingly, the decision not to include them in an additional grant of benefits was rational, and should be upheld.

ARGUMENT

A. BACKGROUND OF THE 1974 COLLECTIVE BARGAINING NEGOTIATIONS

In 1947, Congress enacted Section 302 of the Labor Management Relations Act, 29 U.S.C. §186, generally forbidding all employer payments to representatives of employees. One exception to this broad prohibition was included in Section 302(c)(5), which permits employer contrubutions to jointly-administered labor-management trust funds established for the sole and exclusive benefit of the contributing employers' employees, their families and dependents. During that same year, the UMWA and coal industry employers created a Section 302(c)(5) fund for the purpose of providing health and retirement benefits to eligible miners and dependents. *See generally Van Horn v. Lewis*, 79 Supp. 451 (D.D.C. 1948).

Pursuant to the National Bituminous Coal Wage Agreement of 1950, the union and employers replaced the original fund with the UMW Welfare and Retirement Fund of 1950. That Fund operated on a "pay-as-you-go" basis, with the parties negotiating the contribution rate and the Fund trustees making all other determinations concerning benefit levels and eligibility rules.

In the late 1960's and throughout the early 1970's, the Fund was subject to a number of lawsuits regarding the trustees' administration. The trustees were found to have breached their duties toward beneficiaries, eligibility rules were struck down, and numerous beneficiaries were added to the Fund rolls.[1] As a result of one decision alone, *Blankenship* v. *Boyle*, 329 F. Supp. 1089 (D.D.C. 1971), approximately 26,000 pensioners were added to the Fund. *See* testimony of Roger Haynes, Jt. App. at 114.[2].

In 1974, Congress enacted the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 *et seq.*, which required a specific level of funding for private employer-sponsored pension plans. As a result of ERISA's passage, and the numerous court decisions finding arbitrary and capricious the operational decisions of the Fund trustees, the BCOA set as one of its primary objectives for 1974 collective bargaining the negotiation of fund benefit levels and eligibility rules, in addition to contribution rates. The industry's goals were to minimize the problems experienced during the

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[1]See, e.g., *Danti* v. *Lewis*, 312 F.2d 345 (D.C. Cir. 1962); *Kosty* v. *Lewis* 319 F.2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964); *Gaydosh* v. *Lewis*, 410 F.2d 262 (D.C. Cir. 1969); *Roark* v. *Boyle*, 439 F.2d 497 (D.C. Cir. 1970); *Pete* v. *UMW Welfare and Retirement Fund of 1950*, 517 F.2d 1275 (D.C. Cir. 1975) (*en banc*).

[2]References to the Joint Appendix are cited Jt. App. at ____.

period when the trustees had broad discretion, to insure that the Fund[3] would be properly administered, and to guarantee compliance with ERISA's requirements. Jt. App. at 108-109. Consequently, on behalf of the industry, BCOA entered the 1974 negotiations for a new collective bargaining contract not only with the terms of the economic settlement in mind, but also with the goal of negotiating the actual written documents that would constitute the plans of benefits to be funded under the 1974 NBCWA.

Meanwhile, the UMWA had set its own bargaining goal in the benefits area of doubling the 1971-74 fund contribution rate from $.80 per ton of coal mined to $1.60. Jt. App. at 95. In addition, the union hoped to extend pension and permanent health care coverage to groups of miners' widows whose fund coverage had ceased.

When some of the UMWA's objectives were made public, BCOA began to develop statistics and to prepare costs and estimates for the purpose of setting the remainder of its own benefits goals. Jt. App. at 107. In allocating priorities, BCOA determined that pension benefits warranted greater consideration than health care benefits. Roger Haynes, Chairman of the BCOA Benefits Committee, testified:

> [T]he priority for getting the pensions straightened out and getting the funding going on that, and trying to arrive at a system by which we could have a

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[3]As a result of the 1974 negotiations, the Fund was replaced by four successor funds. Two governed the provision of pension benefits and two — the 1950 Benefit Trust ("the 1950 Fund") and the 1974 Benefit Plan and Trust ("the 1974 Fund") — governed the provision of health benefits to, *inter alia*, retirees (and their dependents) who retired prior to December 6, 1974, and retirees (and their dependents) who retired on or after that date, respectively.

> competitive industry-wide type of a pension program for our current workers was very important to us and an absolute necessity as far as the financing from the funding point of view was required. So this was our first priority.

Jt. App. at 108. Haynes explained what the focus on pension benefits would mean for BCOA's approach to the health benefits negotiations:

> There were a great deal of inconsistencies as far as benefit levels were concerned in the Funds, as far as medical programs were concerned; and we felt as though that would be a hopeless task to be able to get the Pension Plan and the Benefit Plans written in one negotiation. So our primary objective with respect to the benefits, that is the health and medical, was to contain it and not expand it.

Jt. App. at 108-109.

The actual negotiating process began in September of 1974, and it consumed approximately two months of bargaining at the subcommittee level before the remaining benefits issues came to the main negotiating table. As indicated by the testimony of Don Pierce, Assistant Director of Research for the UMWA, the negotiations were conducted on a daily basis at the subcommittee level, with detailed discussions taking place concerning all aspects of the benefits program. The class of beneficiaries represented by Respondents was the subject of extensive discussion and bargaining between the industry and union committees. *See* Jt. App. at 72-105.

When the unresolved fringe benefits issues finally reached the main table, approximately $1.46 or $1.47 of the $1.60 contribution rate demanded by the UMWA had already been committed for benefits negotiated at

the subcommittee level. The expiration date of the prior contract was approaching, and the union regarded that as a strike deadline. Roger Haynes described the resolution of the benefits issues:

> We had already agreed to the S&A benefits, which was the equivalent of about five cents a ton. So the figure became $1.55. We weren't at $1.55 from a cost point contribution according to our estimate. We were at about $1.46.7 or .47, or somewhere in that range and we were on strike.[4]

> Mr. Yablonski made a very emotional and moving speech during the sessions that $1.55 was going to be it, period. So our people evaluated that and came back and made a counter-proposal which would bring us — we were anxious at this time to get the benefits thing wrapped up and not a part of the remaining issues — we made a counter-proposal to come back and cover specifically the widows of 1950 pensioners.
>
> We wanted to resolve the issue of death benefits at $2,500, not $3,000. We wanted full agreement on our method of financing, the man-hour rate and the tonnage rate. We wanted recognition for the black lung differential.
>
> I think we offered the benefits for the widows of the 1950 pensioners and we offered to increase [the pension benefit] I believe, from $195 a month to $200 a month.
>
> We made that offer after being in caucus overnight or something of that nature. The

[4]By the time the benefits negotiations were finally completed, the strike, which lasted 24 days, had begun.

> union took it, caucused, came back the next meeting and accepted it.
>
> In accepting it, we finalized our negotiations on that aspect.

Jt. App. at 115-116. The offer to extend the benefits to the widows of the 1950 pensioners (those pensioners who had retired under the UMW Welfare and Retirement Fund of 1950) excluded the widows in the class represented by Respondents, because their husbands, although eligible for retirement, had continued in active employment until their deaths.[5]

Don Pierce explained the UMWA's position regarding the industry's counter-proposal:

> There was some concern and some dissension among the members of the Health and Retirement Subcommittee and the staff whether or not, if we held out further, it might not be possible to get a few more cents for additional benefits and whether or not that money would have been applied, say, to this class or to an additional few dollars of benefits for pensions, or some other area.
>
> I don't recall. But I know there was a feeling that we could hold out for more. But the main table people felt that this particular area — or at least I assumed they did; I can't speak for them — but that this particular area of people and benefits and the amounts to finance it

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[5]The two pension funds created in the course of the 1974 negotations were the 1950 Pension Plan and the 1974 Pension Plan. The 1950 Plan covered miners who retired prior to December 6, 1974, and the 1974 Plan covered all miners retiring on or after that date.

> were satisfactory as a part of the total economic package.

Jt. App. at 95-96. In response to the question whether he knew why the decision was made to exclude the Respondent's class from permanent health care coverage, Pierce further stated:

> I can't say that I know. I might infer that the union somewhere along the line had to make a decision as to how long it could continue to push for what was by then being a growing length of strike, and that there was only so much money to be had, and that a reasonable effort had been made to include as many people as possible, and it didn't appear that the industry was willing to agree to that group.

Jt. App. at 99-100.

Thus, only after arduous and deliberate bargaining did the parties resolve the problem of allocating finite resources among all of the people the UMWA proposed to benefit. Having structured its objectives in light of the past problems of fund administration, the industry hoped and expected that the parties' negotiated eligibility rules would eliminate the possibility of arbitrary trustee action in the future, with the attendant cost risks involved.

B. WHEN PARTIES, THROUGH GOOD FAITH COLLECTIVE BARGAINING, ESTABLISH ELIGIBILITY REQUIREMENTS FOR BENEFITS UNDER A HEALTH AND WELFARE FUND ESTABLISHED PURSUANT TO SECTION 302(c)(5), IT IS REVERSIBLE ERROR FOR A COURT TO SUBSTITUTE ITS PREFERENCE FOR THE INCLUSION OF

SUBSTANTIVE TERMS IN THE COLLECTIVE BARGAINING AGREEMENT.

As the record in this case clearly shows, BCOA and the UMWA established the eligibility rules in controversy through good faith collective bargaining. At all times during the negotiations, the parties were subject to Section 8(d) of the National Labor Relations Act, 29 U.S.C. §158(d), which imposed upon them the obligation "to meet at reasonable times, and confer in good faith with respect to wages, hours, and other terms and conditions of employment." However, the Section 8(d) obligation "does not compel either party to agree to a proposal or require the making of a concession...."

As this Court has frequently pronounced, it is axiomatic that while the National Labor Relations Board (and the courts by implication) have the power to require employers and unions to negotiate, they are "without power to compel a company or a union to agree to any substantive contractual provision of a collective bargaining agreement." *H.K. Porter* v. *N.L.R.B.*, 397 U.S. 99, 102 (1970). In addressing the limitations on the Board's power to go behind the substance of parties' efforts in collective bargaining, the Court has said that:

> [it] may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.

N.L.R.B. v. *American Insurance Co.*, 343 U.S. 395, 404 (1952), quoted approvingly in *H.K. Porter*, 397 U.S. at 106. While the holding in *American Insurance* is addressed to the Labor Board, its logical extension to the courts as well is reached easily after even a cursory review of the legislative history of Section 8(d).

The object Congress sought to achieve when it enacted the provisions of federal labor law related to the bargaining process was to enhance the principle of freedom of contract.[6] The concept of freedom of contract carries with it the right to negotiate terms as well as to choose ultimately not to enter an agreement. As the Senate Committee on Education and Labor said:

> The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.[7]

In summarizing the discussions in Congress, this Court observed: "[I]t remains clear that §8(d) was an attempt by Congress to prevent the Board from controlling the setting of the terms of collective bargaining agreements." *N.L.R.B.* v. *Insurance Agents*, 361 U.S. 477, 487 (1960).

The Appeals Court below recognized that the eligibility rules challenged in this case were the subject of intense negotiations. Noting that the District Court had concluded that the parties' decision stood as a

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[6]*See generally* Wellington, *Freedom of Contract and the Collective Bargaining Agreement*, 112 U. Pa. L. Rev. 467 (1964).

[7]S. Rep. No. 573, 74th Cong., 1st Sess., 12 (1945); quoted in *H.K. Porter*, 397 U.S. at 104. *See also N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937) ("The Theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreement which the Act .... doesn't attempt to compel.")

legitimate product of bargaining, the Circuit Court said:

> [W]e too are sympathetic toward a compromise hammered out by 'explicit, informed and intense' bargaining on a problem difficult of resolution in a mutually acceptable manner.

Robinson v. UMWA Health & Retirement Funds, 640 F.2d 416, 422 (D.C. Cir. 1981). Then, misapprehending the deference to be accorded the parties' decisions, the Appeals Court held that their negotiated eligibility rules must be measured for rationality:

> Section 302(c) sets substantive limits on the rules established for employee trust funds; as a consequence who formulated the eligibility standards and how it was done are irrelevancies. What is essential is that the eligibility rules themselves not be arbitrary or capricious in content when measured against the governing statute.

640 F.2d at 422.

The Circuit Court's automatic application of the arbitrary and capricious standard, however, ignored the fundamental differences between the decision-making process of the UMWA 1950 Benefit Trust and those of the trust funds involved in the cases in which that standard developed. In a series of cases involving fund benefit levels and eligibility rules established by boards of trustees, the federal courts have scrutinized trustee decisions to determine whether they should be upheld as rationally based, or struck down as arbitrary and capricious. *See, e.g., Norton v. I.A.M. National Pension Fund*, 553 F.2d 1352 (D.C. Cir. 1977); *Toensing v. Brown*, 528 F.2d 69, 71 (9th Cir. 1975).

This level of judicial review is appropriate for trustees who are immune from most of the legal and economic

constraints affecting parties to the collective bargaining process. As this Court noted last Term in *N.L.R.B. v. Amax Coal Co., a Division of Amax, Inc.* ____ U.S. ____, 101 S. Ct. 2789, 2798 (1981), trustee administration of Section 302(c)(5) trust funds is "wholly inconsistent with [the collective bargaining] process of compromise and economic pressure," 101 S.Ct. at 2798, and the trustees' role does not subject them to the statutory duty of good-faith bargaining under the National Labor Relations Act. 101 S.Ct. 2798, n.21; 29 U.S.C. §158(a)(5), (b)(3), (d). Consequently, because trustees lack much of the external pressures affecting labor and management regotiators, judicial review of the substance of their decisions is often necessary.

Where bargaining parties are concerned, however, the very real constraints of the unfair labor practice provisions of the National Labor Relations Act (29 U.S.C. §151 *et seq.*), the duty of fair representation, and the threat of strikes, lockouts, and other exercises of economic power all operate to exert pressures on the negotiating process. In light of these pressures, no purpose is served by judicial intrusion into the substance of the parties' negotiations, particularly where that intrusion runs counter to the longstanding federal policy favoring collective bargaining free of government intervention. *See Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 219 (1979).

This is not to say that no limitations may be judicially imposed on the substantive terms of collective bargaining agreements.[8] Clearly, the collusion feared

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[8]*See, e.g., N.L.R.B. v. Magnavox Co.*, 415 U.S. 322 (1974) (bargaining parties could not agree to waive the organizational rights of employees under the National Labor Relations Act); *U.M.W.A. v. Pennington*, 381 U.S. 657 (1965) (union and employers could not agree to terms that violated the federal antitrust laws); *Steel v. Louisville and Nashville R.R. Co.*, 323 U.S. 192 (1944) (bargaining parties not permitted to discriminate against unit members because of their race).

by the Appeals Court below, 640 F.2d at 423, n.52, is adequately insured against through the application of a standard requiring the bargaining parties to negotiate trust fund eligibility rules in accordance with the good faith requirement of the National Labor Relations Act. Further, to the extent the lower Court was concerned with the possibility of direct interference with trust participants' benefit rights, ERISA sets certain substantive standards which are judicially enforceable. 29 U.S.C. §§1051-1114. However, in the absence of a direct conflict with federal law, the products of good faith bargaining must be permitted to stand. As the United States Court of Appeals for the Third Circuit recently held, "[a]bsent a contractual provision in irreconcilable conflict with federal labor policy, neither courts nor the Board may modify or nullify substantive contractual provisions." *Pacemaker Yacht Co. v. N.L.R.B.*, _____ F.2d _____, 108 L.R.R.M. 2817 (3d Cir. 1981).

The parties in this case reached agreement on the eligibility rules in question only after full deliberation of the consequences of their decision. As District Judge Gesell noted in the decision of the District Court below, the rejection of permanent health care benefits for the Respondents' class was the "legitimate product of deliberate and good-faith collective bargaining," made only after explicit and intense bargaining concerning the difficulty of predicting the cost involved. App. C at 25a.[9] As Judge Gesell further explained: "The familiar history of the anguished relations between the bargaining parties in this case only underscores the delicacy of the balance set in each agreement." App. C at 25a. Where both sides engaged in the give-and-take of good faith bargaining in an effort to reach a compromise over a costly and difficult problem, this Court should permit that compromise to stand.

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[9]Appendix C to Petition of United Mine Workers of America Health & Retirement Funds for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

C. IF THE NEGOTIATED TRUST FUND ELIGIBILITY RULES ARE NOT TO BE ACCORDED THE JUDICIAL DEFERENCE APPLICABLE TO COLLECTIVE BARGAINING AGREEMENTS, THEN, AT A MINIMUM, THEY MUST BE DETERMINED TO BE RATIONAL IN THIS CASE.

Assuming *arguendo* that the Circuit Court of Appeals was correct in applying the arbitrary and capricious standard to evaluate the substantive terms of the collective bargaining agreement, the decision below must still be reversed because the parties' determination not to include Respondents' class of widows as beneficiaries under the 1950 Benefit Trust was rational and reasonably based on several grounds. First, Respondents were never employees within the bargaining unit for which benefits were sought during negotiations. As widows of former employees covered by the NBCWA and the UMW Welfare and Retirement Fund of 1950, Robinson and Hager had no status entitling them as of right to be considered for inclusion among a new group of beneficiaries.

Although in the Courts below, the Respondents asserted that they were similarly situated to the retirees' widows for whom permanent health care coverage was negotiated, even those retirees' widows had no better standing. In fact, had their retired husbands been alive during the 1974 bargaining, they would not have been includable as employees in the bargaining unit under this Court's decision in *Allied Chemical & Alkalai Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172 (1971). Although bargaining over retirees as well as certain other non-unit members, including Respondents' class, would be permissive, it is certainly not obligatory. 404 U.S. at 171, n.11.

Thus, when the UMWA commenced bargaining over the extension of health benefits to Respondents' group, Respondents were accorded the privilege of consideration by the parties, but there was no obligation that they be included in the apportionment of the economic package negotiated.[10] It must be emphasized that any benefits due the widows in Respondents' class as a result of prior negotiations were not affected, and no vested rights were diminished.[11] Because the Respondents were not entitled to consideration in the first place and were not in any way adversely affected by the 1974 negotiations, the parties decision not to include them in an additional grant of benefits was clearly rational.

Second, the federal courts have long held that the establishment of different levels of benefits among classes of beneficiaries is permissible. *Toensing v. Brown*, 528 F.2d 69, 71 (9th Cir. 1975) ("awarding a larger increase in pension benefits to active employees than to retirees does not of itself constitute a violation of the duty of trustees under 302...."); *Jensen v. Garvison*, 274

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[10]Apparently, both the Respondents and the Court of Appeals have confused the crucial distinction between rights and privileges. *See* Hohfeld, *Fundamental Legal Conceptions As Applied In Judicial Reasoning*, 26 Yale L.J. 710 (1917).

[11]Robinson's standing in this case is especially problematic. Her husband died in 1967. Under the Fund then in operation, she was to receive $5,000 in death benefits and five years of health coverage. Presumably, her benefits expired in 1972, two years before the parties bargained for a new benefits package. If this is the case, then because she was no longer a fund beneficiary in any sense, she should not be entitled to consideration under any theory advanced in the Courts below. *See* ERISA's definition of "beneficiary," 29 U.S.C. §1002(8) ("a person designated by...the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder").

F. Supp. 866, 869 (D. Ore. 1967) ("[n]either the statute nor the case law, requires that coverage for each classification should be precisely the same.") In *Toensing*, 328 F.2d at 72, the Court of Appeals specifically ruled that "the decision to award varying benefit increases clearly cannot be characterized as arbitrary and capricious."

Virtually every decision that distinguishes among groups of beneficiaries is somewhat arbitrary. As the D.C. Circuit Court of Appeals previously pointed out in *Roark v. Lewis*, 401 F.2d 425 (1968):

> We recognize that by their very nature most eligibility requirements established in this type of trust are colored to greater or lesser degree by an element of arbitrariness. There are often, however, excellent reasons which impel and require the establishment of a positive line of demarcation separating the eligible from the non-eligible. Basically it is the responsibility of the parties and Congress to determine the appropriateness of the pension plans with the court's participation limited to affirmative action only in those cases where the eligibility requirements are so patently arbitrary and unreasonable as to lack foundation and factual basis and/or authority in governing case or state law.

401 F.2d at 428-29. Using its own standard, the Court below should have affirmed the judgment of the District Court. Even a cursory reading of the record in this case establishes the sound factual basis upon which the eligibility standards were founded.

District Judge Gesell noted that both the UMWA and the BCOA recognized that the magnitude of Respondents' class "could not be practicably

determined," App. C at 25a, and that this cost factor was critical to BCOA. Regardless whether financial concerns would be appropriate as the only rationale for excluding a class of beneficiaries, even the Court below has recognized that the financial soundness of a fund is a legitimate concern. *Roark v. Boyle*, 439 F.2d 497, 501 (1970). Further, in considering how to allocate the limited resources of a trust fund, it is not unreasonable to award greater benefits to employees (and their dependents) with more recent years of service on whose behalf larger contributions have been made. *cf. Toensing v. Brown*, 528 F.2d at 71 (grant of higher benefits to active employees than to retirees was not arbitrary or capricious). In the instant case, the parties negotiated permanent health care coverage for the widows of more recent retirees and more recently deceased active employees.

Finally, two additional rational bases were astutely recognized by Judge Robb in his dissenting opinion below:

> [I]n my opinion the distinction drawn in the trust agreement between the plaintiffs' class and other beneficiaries was reasonable because of financial considerations and because (1) under the agreement the widow of a deceased active miner receives a death benefit of $5,000 over five years, in addition to health benefits during those years, whereas the widow of a pensioner receives only a $2,500 death benefit in addition to permanent health benefits, and (2) an active miner earns wages until his death, as opposed to a pension in a lesser amount, so the need of his family for health benefits may not be as great as that of a pensioner's family.

640 F.2d at 426.

As Judge Robb's analysis makes clear, if Respondents are awarded permanent health care coverage on the ground that they are similarly situated to the widows of pensioners, they will be placed in a better position than the retirees' widows by virtue of their receipt of greater death benefits. Further, their actual status as widows of active miners placed them in a position sufficiently distinct from that of the widows of retirees to justify different treatment. *See Tomlin* v. *Board of Trustees of the Construction Laborers Pension Trust for Southern California*, 586 F.2d 148, 151 (9th Cir. 1978). Because the treatment accorded the widows in Respondents' class was founded on actual, pertinent differences between them and other Fund beneficiaries, the bargaining parties' decision regarding their benefits must be upheld as rational.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

CHARLES P. O'CONNOR
MARGERY SINDER FRIEDMAN
JAMES H. LENGEL

1800 M Street, N.W.
Washington, D.C. 20036
Counsel for Amicus Curiae
Bituminous Coal Operators'
Association, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 1981, this *amicus curiae* brief was served by first-class mail, postage prepaid, on the following:

E. Calvin Golumbic
William F. Hanrahan
Jeanne K. Beck
UMWA Health & Retirement Funds
2021 K Street, N.W.
Washington, D.C. 20006

Larry F. Sword
Sword & McClorey
P.O. Box 350
Somerset, Kentucky 42501

John Rosenberg
Appalachian Research and
Defense Fund of Kentucky, Inc.
P.O. Box 152
Prestonsburg, Kentucky 41653

Charles P. O'Connor